

What Managers Should Know About:

- The ADA Amendments Act of 2008;
- The Connecticut Fair Employment Practices Act; and
- The Genetic Information Non-Disclosure Act

Americans with Disabilities Act

- Prohibits discrimination against qualified individuals with a disability;
- Prohibits discrimination against individuals who have a relationship or association with a qualified individual with a disability;
- Requires employers to provide reasonable accommodations to qualified individuals with a disability unless doing so would cause an undue hardship.

“Disability”

- A physical or mental impairment that substantially limits 1 or more major life activity; or
- A record of such an impairment; or
- Being regarded as having such an impairment.

“Substantially Limits”

- What does this mean?
 - No one really knows yet. Congress has rejected Supreme Court’s interpretations.
 - It does NOT mean “significantly restricted.”
- “the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis.”

“Major Life Activity”

Includes but is not limited to:

Caring for self	Walking	Learning
Performing manual tasks	Standing	Reading
Seeing	Lifting	Concentrating
Hearing	Bending	Thinking
Eating	Speaking	Communicating
Sleeping	Breathing	Working

“Major Life Activity”

Also includes the operation of a major bodily function, including but not limited to:

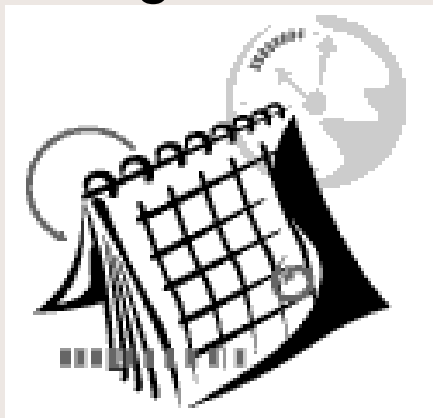
Functions of the immune system	Normal cell growth	Digestive
Bowel	Bladder	Neurological
Brain	Respiratory	Circulatory
Endocrine	Reproductive Functions	

“Otherwise Qualified”

- The individual satisfies the skill, experience, education and other job-related requirements; and
- The individual can perform the “essential functions” of the job.

“Record of” Disability

- Was disabled in the past but is no longer disabled.
 - Example: Employee Paul was once blind but now can see. Employer cannot refuse to hire Paul simply because it fears that Paul will go blind again.



Not changed by the
Amendments of 2008

“Regarded As” Disabled

- The individual must show that he/she has been subjected to discrimination because of an actual or perceived physical or mental impairment *whether or not the impairment limits or is perceived to limit a major life activity.*
- This does not apply to impairments that are transitory and minor
 - “Transitory” = actual or expected duration of 6 months or less

“Reasonable Accommodation”

- A modification or adjustment that enables a qualified individual with a disability to:
 - Be considered for a position;
 - Perform the essential functions of the job; or
 - Enjoy equal benefits and privileges of employment;

AND

- Does not create an “undue hardship.”

Other Definitions

- “Essential Functions” – Job tasks that are fundamental to the job.
- “Undue Hardship” – A significant difficulty or expense.
- “Direct Threat” – A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodations.

Connecticut Fair Employment Practices Act

- Prohibits discrimination on the basis of “physical disability,” “mental disability,” “mental retardation,” and “learning disability” C.G.S. §46a-60(a)(1)
- Does not require a “substantial limitation in a major life activity.”

“Physical Disability”

Any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including but not limited to, epilepsy, deafness or hearing impairment, or reliance on a wheelchair or other remedial appliance or device.

C.G.S. §46a-51(15)

“Mental Disability”

- Having one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association’s “Diagnostic and Statistical Manual of Mental Disorders;”
- Having a record of such a mental disorder; or
- Being regarded as having such a mental disorder.

C.G.S. §46a-51(20)

“Mental Retardation”

“A significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.”

C.G.S. §46a-51(13); C.G.S. §1-1g

“Learning Disability”

- Exhibiting a severe discrepancy between educational performance and measured intellectual ability; and
- Exhibiting a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, which may manifest itself in a diminished ability to listen, speak, read, write, spell or do mathematical calculations.

C.G.S. §46a-51(19)

Does CFEPa require employers to provide accommodations?

- The Connecticut Supreme Court says YES

Curry v. Alan S. Goodman, Inc.
(April 15, 2008)

The Roles of Managers

- Participating in the interactive process regarding reasonable accommodations.
- Identifying a position's essential functions.
- Avoiding inappropriate medical inquiries.
- Preventing harassment and retaliation.

The Interactive Process

- Accommodation must be **reasonable**, **effective** and **not cause undue hardship**.
- Employers are **not** required to
 - eliminate essential functions.
 - lower or change performance standards.
 - lower or change disciplinary rules

Interactive Process

1. Employee makes agency aware of need for accommodation	EMPLOYEE
2. Determine if the employee is eligible for statutory protections. <ul style="list-style-type: none">- If not, consider whether it is appropriate to provide modifications regardless.	HR
3. Analyze the job to determine its essential functions .	HR & MANAGER

Interactive Process

4. Ascertain the job-related limitations imposed by the impairment and how they could be overcome with reasonable modifications.

EMPLOYEE, HR &
MANAGER

5. Identify potential modifications and assess the effectiveness of each.

EMPLOYEE, HR &
MANAGER

6. Select and implement the modification that is most appropriate for the employer and individual.

HR WITH
MANAGER
ASSISTANCE

7. Follow up with employee to determine effectiveness of accommodation

HR WITH
MANAGER
ASSISTANCE

Examples of possible accommodations

- Making facilities accessible.
- Job restructuring to eliminate marginal functions.
- Modifying work schedules and/or granting leaves of absence.
- Obtaining or modifying equipment.
- Reassigning employee to a **vacant** position for which he/she is qualified.

Access to the "benefits and privileges" of employment...

Such as:

- ***Access to facilities*** or portions of facilities to which all employees are granted access (e.g., employee break rooms and cafeterias),
- ***Access to information*** communicated in the workplace, and
- The ***opportunity to participate*** in employer-sponsored training and social events.

Remember...

- The employer is not required to give the employee/applicant his or her first choice.
- The employer is not required to provide the “best” accommodation.

Essential Functions

- Focus on **the purpose** and **desired outcome** of the function, **not the manner** in which it is performed.
- A function may be considered essential for any of several reasons, such as
 - It is the reason the position exists;
 - Only a limited number of employees are available to perform the function;
 - It is a highly specialized function.

Factors for determining whether a function is “essential”

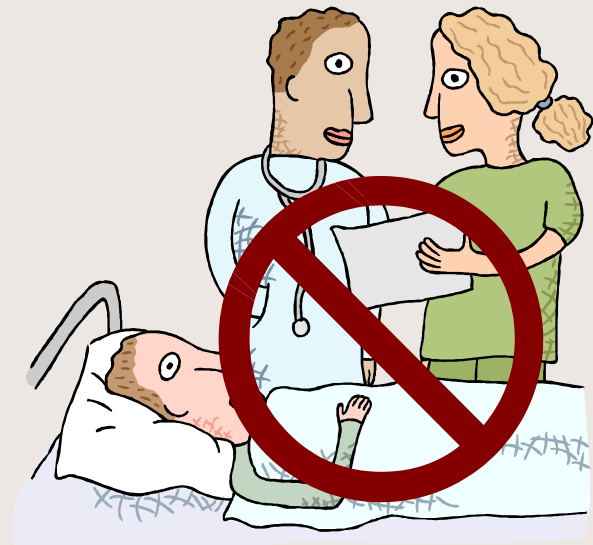
- The employer’s judgment;
- Written job descriptions;
- The amount of time spent on the job performing the function;
- The consequences of not requiring the incumbent to perform the function;

Additional factors:

- The terms of the collective bargaining agreement;
- The work experiences of past incumbents in the job;
- The current work experiences of incumbents in similar jobs.

Medical Inquiries

- As a general rule, managers should **not** ask for or possess medical information about employees.
- HR should handle all medical info.

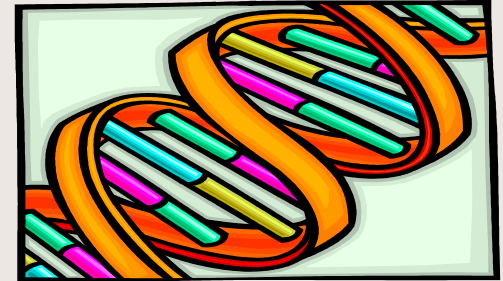


Preventing harassment/retaliation

- Employers are prohibited from harassing or allowing employees with disabilities to be harassed in the workplace.
- Employers are also forbidden from retaliating against an employee who requests an accommodation or opposes discriminatory employment practices.

GENETIC INFORMATION NON-DISCRIMINATION ACT OF 2008

42 U.S.C. 2000ff, *et seq.*



Title II prohibits genetic information discrimination in the workplace

Effective date: November 21, 2009

WHAT DOES GINA DO?

- Prohibits discrimination/harassment on the basis of genetic information (also prohibits retaliation).
- Prohibits the use of genetic information in employment decisions.
- Prohibits the acquisition of genetic information, with some exceptions.

EXCEPTIONS TO ACQUISITION BAN

- Water cooler exception (inadvertent acquisition through voluntary disclosure by employee)
- Voluntary wellness programs
- WC, FMLA & ADA accommodation requirements
- Commercial and publically available information
- Required genetic monitoring of effects of toxic substances
- Quality control by labs performing DNA analysis for law enforcement purposes/human remains identification

